

Illinois allows a credit against Illinois Use Tax liability for tax that has been properly paid to another State. See 86 Ill. Adm. Code 150.310(a)(3). (This is a GIL).

November 21, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 28, 2001 to Director of the Division of Aeronautics. Your letter was forwarded to me for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am the owner of the subject aircraft which has been registered with your office since 1999. The plane was purchased in CITY/STATE in March 1999 and was initially flown to California where I own a condominium in San Diego. I am retired and this is where my wife and I spend our winters. My declared residence is Illinois and has been since 1946.

I have been in correspondence with the California State Board of Equalization and have been advised that, under California law, if a plane is purchased outside the State of California, and brought back to California, there is a 'presumption of intent' to use the plane in California, which makes me subject to California Use Tax. I cannot deny that I did intend to use the plane in California at least until the weather improved in Illinois. I did fly the plane to Illinois in June or July 1999 where it was duly registered.

Unfortunately, I do not have all of my correspondence here, and I do not intend to return to California until late November, but I shall try to reconstruct as best I can. I advised the State of California that I was not a resident of California, but I did not object to paying a use tax for the time I spent in California. I did object to paying a sales tax to California because I had already paid some \$\$ to the State of Illinois. A letter from the Board of Equalization informed me that I was entitled to deduct whatever sales tax was paid to Illinois from the tax due to California. Accordingly, when I received a bill from the Board of Equalization for some \$\$\$, I paid the sum of \$\$\$. However, I did point out that part of this payment included interest on the \$\$ already paid to Illinois.

I have since been informed by phone on Sept. 7, 2001, that the prior letter saying I was entitled to deduct the tax paid to Illinois was incorrect and that I should pay the full amount due, and seek reimbursement from the State of Illinois. Since I am unfamiliar with the proper procedure for doing so, I hereby request that the State of Illinois refund

to me the sum of \$4,279.00 so that I can pay this amount to the State of California; or if you have some sort of reciprocity agreement, this payment can be made directly to the State of California Board of Equalization. I have been informed by the Illinois Dept. of Revenue that there is some sort of precedent for doing this sort of thing.

Please be advised that when a person registers or titles an airplane in Illinois, Illinois Use Tax is due. The Use Tax is imposed on the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer, 35 ILCS 105/3. By registering an airplane in Illinois, a person exercises a power over it in Illinois that constitutes a "use" under the provisions of the Use Tax Act, 35 ILCS 105/1 et seq., and Illinois Use Tax is properly due.

Illinois does, however, allow a credit to taxpayers against their Illinois Use Tax liability when they have already paid sales tax on tangible personal property that was properly due to another State. This credit is only allowed for tax and can not apply to any interest or penalty paid to another State. The statutory language for this credit is found at 35 ILCS 105/3-55(d), where it explains that the Use Tax does not apply to:

"(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State."

Whether the Department may refund the tax you have paid appears, from the limited information presented, to depend primarily on whether your original use of the aircraft in California subjected it to California tax at that time. If so, and we cannot make this determination from the limited facts presented, the amount of tax paid to Illinois may have been in error. As noted above, since you registered the airplane in Illinois, tax was properly due to Illinois. However, the amount may be at issue. If taxes were in fact properly due and owing to California, and you paid such taxes, your Illinois tax could be reduced by the amount properly due and paid to California. Your letter indicates that you have not yet remitted all taxes due to California.

A purchaser who has paid tax in error to the Department through a mistake of fact or error of law may file a claim for credit or refund. The payment of a refund in lieu of issuance of a credit memorandum is generally subject to the claimant meeting certain hardship requirements. Please refer to 86 Ill. Adm. Code 150.1401(a), enclosed. This regulation describes the procedures used to obtain claims for credit or refunds for taxes that were erroneously paid. Taxpayers who paid Use Tax on vehicles or aircraft acquired outside of Illinois on Form RUT-25 can file a claim for credit by submitting Form RUT-25-X. This form and its instructions are available on the Department's Website under "Forms." The normal statute of limitations for filing such a claim for credit is from three to three and one-half years from the date of payment. Claimants must establish that such taxes were paid through mistakes of fact or errors of law. Again, based upon the limited amount of facts in your letter, we cannot determine whether tax was properly due and owing to California. We would advise you to obtain documentation from California verifying the amount of taxes due to California (e.g., a Notice of Tax Liability or a ruling that taxes in a specified amount were due upon bringing your plane there), as well as proof of payment, and attach this information to your claim.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.